

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

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|-------------------------------------|---|--------------------------------|
| JOHNNY POTTS, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | CIVIL ACTION NO. 3:06cv124-WHA |
| |) | |
| DYNCORP INTERNATIONAL, LLC, et al., |) | |
| |) | |
| Defendants. |) | |

ORDER

This case is before the court on Defendant Dyncorp International, LLC's Motion to Amend Answer (Doc. #27), filed on September 11, 2006. By the proposed Amended Answer, the Defendant seeks to raise the issue that the court lacks subject matter jurisdiction over this case, yet the Answer fails to set out the basis for that contention.

Subject matter jurisdiction is an issue which needs to be resolved promptly, since the court has no authority to act in any way in the case if, in fact, there is no subject matter jurisdiction. If subject matter jurisdiction exists, the proposed amendment would be futile, and the motion should be denied. If, however, the court does lack subject matter jurisdiction, the case should be dismissed, rather than being allowed to continue with the jurisdictional issue unresolved. Therefore, it is hereby

ORDERED that the Defendant, Dyncorp International, LLC, is given **until September 22, 2006**, to file a brief showing cause why the proposed amendment would not be futile, and why this court lacks subject matter jurisdiction over this case. Any evidence which the Defendant deems appropriate to be considered must be submitted with its brief. If no such brief

is filed, the court will deny the motion. If a brief is filed, the court will enter an order giving the Plaintiffs an opportunity to respond.

DONE this 11th day of September, 2006.

/s/ W. Harold Albritton

W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE